IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT;-

THE HONOURABLE MR.JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 21ST NOVEMBER2006/30TH KARTHIKA,1928

W.P.(C) nO.27111/2006

(E.P.54/04 IN O.S.88/98 OF MUNSIFF COURT, VADAKARA)

PETITIONER;-

MALAYIL MAMMU, AGED 68 YEARS,
S/O.ALIKKUTTY, VAIKILISSERY AMSOM, KURIKKILAD DESOM
BADAGARA TALUK, KOZHIKODE DISTRICT.

BY ADV.SRI.P.SHAMSUDIN

RESPONDENTS

CHEMBILORA PILAKOOTATHIL GOPALAN, S/O.CHATHUKUTTY
NARIPPATTA AMSOM, TIRUR DESOM, BADAGARA TALUK,
KOZHIKODE DISTRICT.

BY ADV.SRI.SHAHNA KARTHIKEYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21.11.06, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING;-

APPENDIX

EXT.P1:- True copy of the draft sale paper in EP 54/2004 of Munsiff Court, Vadakara.

Ext.P2:- True copy of the counter filed by the petitioner dt. 23.05. 2005.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.27111 OF 2006

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Dated this the 21st day of November,2006

JUDGMENT

Petitioner is the judgment debtor. Respondent is the decree holder. This petition is filed under Article 227 of Constitution of India challenging the order of proclamation and sale passed by the executing court contending that it is not necessary for sale of the entire property for realisation of the decree debt and even by sale of a portion of that property sufficient amount could be realised to satisfy the decree debt. It was also contended that, executing court did not consider the objections raised by petitioner, wherein it was contended that value of the property shown in the draft sale proclamation is far lower than the actual value.

2. Learned counsel appearing for petitioner and respondent were heard.

3. Rule 64 of Order XXI of Code of Civil

Procedure mandates that executing court shall direct sale of only that portion of the attached property, which is sufficient to realise the entire decree debt. The provisions under Rule 64 is not a discretion, but an obligation imposed on the executing court, before directing sale of the attached property. When petitioner specifically contended that it is not necessary to sell the whole property, and by directing sale of a portion of the property the entire decree debt could be realised, executing court is bound to consider that objection and find whether by sale of a portion of the property, the decree debt could be realised.

4. So also under second proviso to sub Rule (2) of Rule 66 of Order XXI, though executing court need not conduct an enquiry and determine its assessment of the value of the property attached, executing court is bound to direct the value shown by the judgment also in the sale papers.

5. Before directing sale of the property,

executing court did not comply with the provisions of Rule 64 and second proviso to sub rule (2) of Rule 66 of Order XXI of C.P.C. The order of the executing court directing sale of the property is set aside. Executing court is directed to pass fresh order in accordance with law, in the light of the observations made earlier. It is made clear that if by sale of a portion of the property, the decree debt cannot be realised, executing court can direct sale of the remaining property also.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006